



IRCP

Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – Exchanging Criminal Records and Taking Into Account Foreign Criminal Convictions – Trier, 7 July 2009

Exchanging criminal records and Taking Into Account Foreign Convictions

Prof. Dr. Gert Vermeulen

Summer Course on European Criminal Justice
ERA – Trier, 7 July 2009



Structure

- > acquis (pre-Amsterdam)
- > current EU initiatives
 - > context
 - > overview – state of affairs
 - > questions and challenges
 - > towards a generic EU data structure?
 - > further potential
- > questions & discussion



Acquis (pre-A'dam)

- > CoE treaties, chiefly
 - > 1959 MLA (Articles 13 & 22)
 - > 1960ies Road Traffic
 - > 1970 Int'l Validity Criminal Judgements
 - > =MR *avant-la-lettre*
- > unsuccessful EPC-Convention 1991
- > Schengen (road traffic)
- > EU (Maastricht): 1996 driving licenses
- > ...



Context current EU initiatives (1)

- Mutual Recognition (MR) Plan November 2000
 - individualisation of sanctioning
 - take account of previous EU convictions in sentencing for newly committed offences
 - already introduced for EUR fraud/counterfeiting
 - give effect to disqualifications in MS of residence (e.g. driving license withdrawal) or all MS (e.g. working with children)
 - mutual recognition of decisions to prosecute
 - link with avoiding 'double prosecution' (extended ne bis)
 - feasibility study requested re EU criminal records system and register of disqualifications
 - IRCP-initiated; co-financed by EC (Grotius)
 - Vermeulen et al (2002), Blueprint for an EU criminal records database



Context current EU initiatives (2)

- > Fourniret case 2004 (B-F)
 - > what? challenge (real, perceived)
 - > recalling Dutroux case 1996 (B), having triggered studies (IRCP) & policy initiatives re EU data collection sexual offences against children
- > initiative European Commission
 - > White Paper 2005 (+ annex)
 - > building strongly on proposals Vermeulen et al
 - > searchable central index system
 - > detailed (folio) info remains in individual MSs
- > JHA Council April 2005: political 'dual track' scenario
 - > convictions against EU citizens
 - > centralisation in MS of nationality
 - > triggered by 'interconnection' pilot network (B-F-D-E) (expanded)
 - > convictions against 3rd country nationals
 - > central index system after all? see: COM (2006) 359 working doc



Overview – State of affairs

- › Decision November 2005 (to be abrogated from by)
- › FD organisation & content 2009
 - › centralisation info in MS of nationality
 - › “develop standardised European format allowing criminal records info exchange in a uniform, electronic & easily machine-translatable way”
 - › Unisys & IRCP - has lead to ECRIS 2009 (and classification)
 - › improve application CoE 1959 MLA Convention
 - › render Article 22 (more) performant
 - › especially relevant for ministries/central authorities
 - › facilitate/accelerate crimrec-related MLA requests Article 13
 - › especially relevant for decentral, competent authorities
- › FD on taking account of earlier EU convictions 2008
 - › addresses decentral, competent judicial authorities
- › working doc on feasibility index system 3rd country nationals (supra)



Questions and challenges

- > involvement end users?
 - > judicial authorities: courts/judges, investigating judges, prosecutors
 - > police authorities? (national, Europol; explanation)
- > (preliminary) investigation
 - > current proposals: minimal investigative relevance (only searchable on name/id-related fields, in case of known EU nationality)
 - > Fourniret case at least triggered change in Belgium (not a EU level)
- > establishing 'ne bis in idem' situation
- > sentencing
 - > taxation/assessment of foreign sentence/sanction: how?
 - > current proposals: bring no EU-wide equivalence of criminal justice concepts/jargon
 - > ideal system: double qualification (extra work)
- > what about disqualifications?
 - > no more negative impact than in sentencing MS (courts/judges' role?)
 - > integration Belgian proposal (children): not really happened so far ...



Towards a generic EU data structure?

- > EU criminal justice Esperanto” (single EU interface)
- > i.e. new standardized logic, with
 - > offender-related fields
 - > offence-related fields
 - > encompassing EAW categories, pilot network families and classifications Europol IS & Eurojust CMS, etc
 - > idea of EU classification of offences officially supported
 - > DG JLS/D3 (criminal records) + Unisys/IRCP (crime statistics)
 - > EULOCS (enhancing internal coherence EU criminal policy)
 - > decision-related fields
 - > sanction/measure-related fields
- > additional benefits
 - > making most of info machine-translatable
 - > providing end-user useful interpretative info (where available)



Further potential

- > use common format (generic structure?) also for
 - > direct exchange under Article 13 1959 Convention
 - > EU-index system MS' info on 3rd country nationals
- > maximize investigative/prosecutorial value criminal records infoex system
 - > make offence-/other fields searchable
 - > via MLA requests or based on PoA
 - > link in with Europol information system
 - > allow Eurojust access (CMS) (ne bis in idem)
- > role Eurojust in hosting index-system
 - > for 3rd states' access?, based on Article 24 j° 38 TEU?
- > additional EU legislation based on MR concept
 - > regarding legal effect inclusion following notification (see:B)
 - > limited introduction EU-certificates non-prior conviction



IRCP

Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – Exchanging Criminal Records and Taking Into Account Foreign Criminal Convictions – Trier, 7 July 2009

Questions and discussion
